

**Before the Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Puerto Rico Cable Acquisition Corp. d/b/a)	CSR-7201-Z
Choice Cable T.V.)	
)	
Request for Extension of Waiver Pursuant to)	
Sections 1.3 and 76.7 of The Commission's Rules)	

MEMORANDUM OPION AND ORDER

Adopted: August 25, 2011

Released: August 25, 2011

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we conditionally grant Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V.'s ("Choice" or "Petitioner") unopposed request for a three-year extension of the waiver of the ban on integrated set-top boxes.¹ As described below, we continue to find that the unique aspects of Choice's Puerto Rico market warrant a waiver extension, but we condition our grant on Choice filing an annual report detailing its support and provision of CableCARDS.

II. BACKGROUND

A. Section 629 of the Act

2. Congress directed the Commission to adopt regulations to assure the commercial availability of navigation devices such as set top boxes more than ten years ago as part of the Telecommunications Act of 1996.² The Commission implemented this directive in 1998 through the adoption of the "integration ban," which ultimately established July 1, 2007 as the date after which cable operators were prohibited from placing into service any new navigation device that performed both conditional access and other functions.³ The purpose of the integration ban is to assure reliance by both

¹ 47 C.F.R. § 76.1204(a)(1). The separation of the security element from the basic navigation device required by this rule is referred to as the "integration ban."

² See Section 629(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 549(a) (requiring the FCC "to adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor"); see also Telecommunications Act of 1996, Pub. L. No. 104-104, § 304, 110 Stat. 56, 125-126 (1996).

³ See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14803, ¶ 69 (1998) ("First Report and Order") (adopting Section 76.1204 of the Commission's rules, subsection (a)(1) of which (1) required multichannel video programming distributors

cable operators and consumer electronics manufacturers on a common separated security solution.⁴ This “common reliance” is necessary to achieve the broader goal of Section 629 – *i.e.*, to allow consumers the option of purchasing navigation devices from sources other than their MVPD.⁵ In limited circumstances operators may be eligible for waiver of the integration ban.⁶

3. Last year the Commission adopted rules to improve the CableCARD regime and further the goals of Section 629.⁷ Specifically, the Commission adopted rules to (1) require cable operators to support the reception of switched digital video services on retail devices;⁸ (2) prohibit price discrimination against retail devices;⁹ (3) require cable operators to allow self-installation of CableCARDs;¹⁰ (4) require cable operators to provide multi-stream CableCARDs by default;¹¹ and (5) clarify that CableCARD device certification rules are limited to certain technical features.¹² The Commission also modified our rules to encourage home-networking by simplifying our set-top box output requirements¹³ and adopted a rule to promote the cable industry’s transition to all-digital networks by exempting all one-way set-top boxes without recording functionality from the integration ban.¹⁴

(“MVPDs”) to make available by July 1, 2000 a security element separate from the basic navigation device (*i.e.*, the CableCARD), and, in its original form, (2) prohibited MVPDs covered by this subsection from “plac[ing] in service new navigation devices ... that perform both conditional access and other functions in a single integrated device” after January 1, 2005); *see also* 47 C.F.R. § 76.1204(a)(1) (1998).

⁴ *See Cablevision Systems Corporation’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 220, 226, ¶ 19 (2007) (citing the *2005 Deferral Order*, 20 FCC Rcd at 6809, ¶ 30) (explaining why the Commission “require[d] MVPDs and consumer electronics manufacturers to rely upon identical separated security with regard to hardware-based conditional access solutions”).

⁵ *See* S. REP. 104-230, at 181 (1996) (Conf. Rep.). *See also Bellsouth Interactive Media Services, LLC*, 19 FCC Rcd 15607, 15608, ¶ 2 (2004). As the Bureau noted, Congress characterized the transition to competition in navigation devices as an important goal, stating that “[c]ompetition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality.”

⁶ For example, Section 629(c) provides that the Commission shall grant a waiver of its regulations implementing Section 629(a) upon an appropriate showing that such waiver is necessary to assist the development or introduction of new or improved services. 47 U.S.C § 549(c). Furthermore, petitioners who have shown good cause have received waivers of the integration ban pursuant to Sections 1.3 and 76.7 of the Commission’s rules. *See Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 8557, 8564-5, ¶¶ 18-19 (2007).

⁷ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 25 FCC Rcd 14657 (2010) (“*Third Report and Order and Order on Reconsideration*”). These new rules went into effect on August 8, 2011.

⁸ *Id.* at 14665-7, ¶¶ 13-14.

⁹ *Id.* at 14668-9, ¶ 19.

¹⁰ *Id.* at 14671-3, ¶¶ 26-29.

¹¹ *Id.* at 14674, ¶ 33.

¹² *Id.* at 14675-6, ¶ 37.

¹³ *Id.* at 14678-9, ¶¶ 43-44.

¹⁴ *Id.* at 14681, ¶ 49.

B. Request for Waiver

4. On April 4, 2011, Choice submitted a request for a three-year extension of a waiver of the integration ban¹⁵ for all set-top boxes, including high-definition (HD) and digital video recorder (DVR) set-top boxes, as established in a July 1, 2008 Media Bureau order.¹⁶ The Bureau based its decision to grant waiver on the “idiosyncratic factual situation” that Choice faced in the rural Puerto Rico market, where, unlike the mainland United States, the median yearly income was less than \$13,000, which meant that many residents could not afford the \$1500 to \$6000 price of CableCARD high definition televisions.¹⁷ The Bureau concluded that if it denied the original request for waiver, Choice’s compliance with the integration ban would make HD service prohibitively expensive for rural Puerto Rico residents and could potentially eliminate the availability of HD/DVR service for the few residents who can afford it.¹⁸ Accordingly, the Bureau found good cause to grant Choice’s request for waiver pursuant to Sections 1.3 and 76.7 of the Commission’s rules.¹⁹

III. DISCUSSION

5. We find that Petitioner has sufficiently demonstrated good cause for waiver and we conclude, for the same reasons as in the *Choice Waiver Order*, that an extension of three years from the release date of this Order is justified under the Commission’s rules.²⁰ According to Choice, the waiver “has been a tremendous success.”²¹ Specifically, since the Commission granted the original waiver, Choice has more than quadrupled its number of HD channels and added approximately 1,300 HD subscribers.²² According to Choice, and unopposed by any commenters, the waiver also led to greater digital video availability than would otherwise have been possible and facilitated Choice’s launch of competitive telephone and commercial broadband services.²³ The factual circumstances the originally led us to grant this waiver are still true today. That is, the median household income in Choice’s service area is still exceptionally low as “90% of households [in Choice’s service area] have an income less than the U.S. median.”²⁴ The record reflects that retail DVRs are not prevalent in Choice’s service area; TiVo does not ship its devices to Puerto Rico.²⁵ Given these circumstances, we find good cause to grant Choice’s request.

¹⁵ Puerto Rico Acquisition Corp. d/b/a Choice Cable T.V.’s Request for Extension of Waiver of 47 C.F.R. § 76.1204(a)(1), CSR 7201-Z (filed April 4, 2011) (“Extension Request”).

¹⁶ *Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V. Requests for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 23 FCC Rcd 10365 (2008) (“Choice Waiver Order”).

¹⁷ *Choice Waiver Order*, 23 FCC Rcd at 10358, ¶ 4.

¹⁸ *Choice Waiver Order*, 23 FCC Rcd at 10358-9, ¶¶ 4-5.

¹⁹ *Id.*

²⁰ 47 C.F.R. §§ 1.3, 76.7.

²¹ Choice Waiver Extension Request at 2.

²² Choice Waiver Extension Request at 2.

²³ *Id.*

²⁴ Choice Waiver Extension Request at 2-3.

²⁵ Choice Waiver Extension Request at 2-3. Although TiVo will not ship its devices from its website, TiVos are available in certain retail stores. See Choice Waiver Extension Request at 3; Letter from Matthew Zinn, Senior Vice

6. Although Choice has provisioned few CableCARDs given the limited availability and limited demand of CableCARD devices in Choice's low-income service area, we are concerned about a complaint that the Commission received earlier this year from a customer requesting support for their CableCARD device.²⁶ In addition, counsel for Choice acknowledged that there was "one instance of temporary customer dissatisfaction" related to CableCARDs, which Choice has since resolved.²⁷ While we believe that an extension of the original waiver will continue to benefit the low-income, small and rural communities that Choice serves, we find that it is in the public interest to condition our grant to ensure that Choice is appropriately supporting retail CableCARD devices. Therefore, as a condition of the waiver extension, we require Choice to file an annual report outlining, in detail, any CableCARD requests it receives, the support offered, customer complaints, the cost of installation and any CableCARD-related service calls. We will use this information to ensure that grant of this waiver continues to serve the public interest.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1.3 and 76.7 of the Commissions rules, 47 C.F.R. §§ 1.3, 76.7, a waiver of the integration ban outlined in Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1) **IS GRANTED** to Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V. for three years from the date of this Order, as conditioned above.

8. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

President, General Counsel, Secretary and Chief Privacy Officer, TiVo, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CSR-7201-Z (filed July 22, 2011).

²⁶ On March 12, 2010, the Commission received Complaint No. 10-C00202869-1 from a Choice customer in Puerto Rico who recently purchased a TiVo TCD658000 HD XL Digital Video Recorder with the expectation that Choice would provide a CableCARD. However, a Choice representative told the customer that the company did not need to supply the customer with a CableCARD. When the Bureau granted Choice a waiver of Section 76.1204(a)(1), it exempted Choice from complying with the integration ban outlined in the second sentence of that subsection, specifically, "commencing on July 1, 2007, no multichannel video programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device." We remind Choice that although it has a waiver of the "integration ban" portion of Section 76.1204(a)(1), Choice is still required to comply with the first sentence of that subsection, namely that "a multichannel video programming distributor that utilizes navigation devices to perform conditional access functions shall make available equipment that incorporates only the conditional access functions of such devices." Therefore, as the rule states, Choice is obligated to provide a functional CableCARD to customers upon request. *See also* Letter from Matthew Zinn, Senior Vice President, General Counsel, Secretary and Chief Privacy Officer, TiVo, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CSR-7201-Z (filed July 22, 2011).

²⁷ Letter from Paul Hudson, Esq., Counsel, Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V., to Marlene H. Dortch, Secretary, Federal Communications Commission, CSR-7201-Z (filed June 14, 2011).